IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10406 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRABHAI RATANJI PATEL

Versus

STATE OF GUJARAT THRO' DEPUTY SECRETARY

Appearance:

1. Special Civil Application No. 10406 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR SIRAJ GORI, Ld. AGP for Respondent No. 1-2

MR TUSHAR MEHTA for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/10/2002

ORAL JUDGEMENT

1. Rule. Mr.Gori, learned AGP appearing on behalf of respondents No.1 and 2 and Mr.Tushar Mehta, learned Counsel appearing on behalf of respondent No.3 waive service of notice of rule. With the consent of all the parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner against the order dated 1-10-2002 passed by Shri R.K.Machhar, Deputy Secretary (Appeals) of the State Government in revision application No.111/2001. There is no dispute on the point that on 1-10-2002 when the Deputy Secretary, Shri R.K.Machhar passed the order, he was not holding the charge of Deputy Secretary (Appeals) and he was transferred as the Deputy Secretary from 23rd September, 2002.

3. The learned AGP appearing on behalf of the State Government contended that the hearing was made before Shri R.K.Machhar on 21st September, 2002 and he has prepared draft of the order and as per the instructions of the government, the said draft was forwarded to the concerned Secretary and the Minister for approval. Since the approval came late, the order was signed on 1-10-2002. The learned AGP submitted that as a matter of fact, the decision was taken on 21-9-2002 when the draft was prepared.

4. The aforesaid contention of the learned AGP appearing on behalf of the State Government exercising quasi judicial authority deserves to be rejected on the basis of his own contention because the draft means a tentative decision and it can not be treated as final decision. It may be that on account of some procedural requirement the Deputy Secretary might have forwarded to the Secretary of the Department and to the concerned Minister, but the same does not make any difference because the order is made operative from 1-10-2002 and there is no dispute on that point. When the quasi judicial authority exercises power, it is doubtful as to whether the approval or prior permission is to be obtained from the Secretary or the Minister concerned. I am not expressing any opinion on the said aspect, and the said aspect is kept open. However, it is an admitted position that on 1-10-2002 when Shri Machhar signed the order, he was not holding the charge of the Deputy Secretary (Appeals) and he was transferred from 23-9-2002. In my view only on the short ground the order passed cannot be sustained and in view of the same the matter will have to be sent back for re-hearing before the Deputy Secretary, who is holding the charge.

5. There is consensus by both the sides that the learned Counsel for the revisional petitioner as well as the respondents shall remain present on 23-10-2002 before the Deputy Secretary concerned at 4.30 p.m. for the purpose of hearing of the revision and no adjournment shall be sought. The learned AGP under the instructions also states that the matter will be heard on that day and the decision, in accordance with law, will be rendered.

6. In view of the above, the order dated 1-10-2002 is set aside only on the ground that the person who has signed was not holding the charge at the relevant point of time and the parties are directed to remain present on 23-10-2002 at 4.30 p.m. before the Deputy Secretary (Appeals) and the concerned Deputy Secretary (Appeals) shall hear the parties and render the decision in accordance with law. It is made clear that all the contentions of the parties are kept open and it will be open to both the sides to raise contentions in accordance with law. It goes without saying that the Deputy Secretary (Appeals) shall be at liberty to take decision in accordance with law.

7. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

18-10-2002 (Jayant Patel, J.)

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